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Current Topics.

Rights of Audience in Hardship Tribunals.

AMONG the amendments proposed during the committee stage of the National Service Bill was one moved by Sir H. WILLIAMS, that s. 6 (7) of the National Service (Armed Forces) Act, 1939, should be amended by adding the words "provided that any applicant may have legal representation before the tribunal." The tribunal referred to is the Military Service (Hardship) Committee, and the provisions relating to that committee are, with other provisions of the National Service Acts, 1939 to 1941, to be applied in relation to women as they apply in relation to men, under cl. 3 of the National Service Bill. The main argument put forward in support of the amendment was that people become tongue-tied when they appear before a tribunal. Mr. BEVIN replied that he thought that the hardship committees could get on better without this legal assistance. He said that a factor which must be borne in mind was the feeling which might be created that persons who could afford to have a barrister would get a better chance before the committees. He said that when he was union secretary he used to advise against legal representation, because if a solicitor appeared, the magistrate had the impression that somebody had some money, and that was the reason for putting on a fine. Mr. S. O. DAVIES said that the fact that the chairman was a barrister or a lawyer also had its effect. He did not think that examination and cross-examination were always of advantage, either to the tribunal or to the applicant, in carrying out the purposes of the Armed Forces Act, and suggested that in any new appointments the Minister would see that the chairmen were men with experience in industrial life, rather than experience in the legal profession. Mr. BEVIN, in response to further discussion, pointed out that any person appearing before the hardship committee could be accompanied by a friend and that that friend might be a member of the legal profession. Mr. SILVERMAN asked whether there ought not to be legal representation before the umpire, as it was there a question of relating one decision to another, working out a principle and applying past cases. The question that the clause be read a second time was put and negatived. Mr. BEVIN'S suggestion that it is more advantageous not to be legally represented before magistrates will not, it is submitted, bear examination, and in any case there is no analogy between magistrates' courts and hardship tribunals. The argument that facilities for legal representation might create a feeling that those who can afford such assistance will have a better chance than those who cannot is more impressive. As equality of treatment is vital in questions of national service, it is probably desirable that even the appearance of inequality should be avoided.

Maintenance Orders and the Cost of Living.

IN a letter to *The Times* of 2nd December Mr. CLAUD MULLINS referred to the fact that the cost of living index figure is now double the figure of 1914 and suggested that an increase in the maximum amount of £2 a week which wives can obtain in a magistrate's court on a separation or maintenance order should quickly be enacted. He said that the figure was fixed by Parliament in 1895, and the question was all the more urgent since by a recent decision of the Divorce Court (*Wallis* v. *Wallis* [1941] P. 69) it was doubtful, owing to the 10s. income tax, whether in fact more than £1 a week could be ordered in cases where the husband is liable to pay income tax. The amounts which could be ordered for children, he wrote, also needed revision. The figure of 10s. a week was fixed in 1920, but for illegitimate children 20s. a week can be ordered (fixed in 1923). Where a wife seeks no money for herself, but seeks guardianship, 20s. a week can be ordered for each child (fixed in 1925). These differences, Mr. MULLINS wrote, are irrational and need early abolition. There is clearly a strong case for the increase of maxima which were fixed so many years ago, when the value of money was much higher than it is at present. It is also clear that the economic position of married women who have maintenance orders against their husbands is further affected by the President's *dictum* in *Wallis* v. *Wallis* [1941] P. 76, that "the general rule should be to make orders uncomplicated by the provision that they are to be free of tax." As to the amounts awarded in respect of children, the figures speak for themselves, and Mr. MULLINS has performed a useful service in bringing the matter before the public attention.

Vesting Assents and the War Damage Act.

SOME guidance on an interesting practical point arising out of the War Damage Act, 1941, is given in a letter from the Secretary to the Treasury to a correspondent, who has kindly forwarded it to us. The letter was in reply to our correspondent's question as to the situation which may arise when a person entitled to receive a value payment under Pt. I, or a payment under one of the schemes under Pt. II of the War Damage Act, 1941, dies before receiving payment. The reply was that the Lords Commissioners of the Treasury had directed the Secretary to write that where the person entitled to a value payment dies, the legal personal representative should in the ordinary course of administration of the estate assent in writing to the vesting of the right to the payment in the person or persons entitled thereto under the will or intestacy. The approval of the War Damage Commission, it was stated, is not required to the assignment of the right to a value payment effected by such an assent. If no assent of any kind to the vesting of the value payment has been made before the chain of representation is broken by the death of the executor or administrator, it will apparently be necessary, the letter states, to obtain fresh grant of representation in the ordinary way. These observations apply *mutatis mutandis* to payments under the schemes under Pt. II of the Act. Solicitors will be grateful for this indication of the proper procedure to be followed in such cases. As far as payment under Pt. I of the Act is concerned, the matter is dealt with in s. 9 (7), which provides that the right to receive payment is transmissible by assignment or operation of law as a personal right, but an assignment shall be of no effect until it has been approved in writing by the Commission. It is by no means clear from the express terms of this section that a vesting assent is excluded from the type of assignment requiring the written approval of the Commission and it is useful to know the official view on the matter.

A Technical Offence.

AN unfortunate case in which counsel for the defence urged that the Crown could not complain about the behaviour of the defendants, but that the defendants were entitled to complain about the way they had been treated by Government departments, came before the magistrate at Clerkenwell

Police Court on 16th December. The magistrate agreed with this observation, and dismissed the charge under the Probation of Offenders Act on payment of fifty guineas costs. The defendants were a company of cloth workers and waterproofers, and an architect, and the charge was for executing a building or structural operation without the authority of a licence granted by the Ministry of Works and Buildings. The company pleaded guilty, and the proceedings against the architect were withdrawn. On behalf of the company it was stated that their factory had suffered war damage on 16th April, and since that date the defendants had had to deal with eleven or twelve separate authorities. The architect, it was pointed out, had received information from the War Damage Commission that the section under which he was prosecuted did not apply to temporary repairs. When the damage was done, £4,000 worth of machinery was left exposed to the wind and the weather, and a valuable export business to America was held up. It was not until 8th August that the company was refused a licence. Work was stopped at once. The machinery was now rusting and no orders could be carried out. As an example of the way in which the architect had to spend his time, the architect spent a Friday afternoon with the district surveyor and the L.C.C., but was referred to the Ministry of Works and Buildings, where he spent the Saturday morning. From there, he was referred to the borough surveyor of St. Pancras, who sent him under a new regulation to another authority which had been set up. The procedure is reminiscent of Dickens' "Circumlocution Office," and it is to be hoped that it is not typical.

Discharge of Civil Defence Workers.

In a case at Old Street Police Court on 9th December in which a civil defence worker was fined for disobeying an order to take part in a gas exercise and absenting himself without leave from a depot, Mr. Langley, the magistrate, made severe comments on a printed notice issued by the Home Office and Ministry of Home Security to civil defence workers. The notice stated that "if there was no resumption of duty at the end of thirteen weeks' sick pay, the person would be deemed to be discharged." The magistrate characterised it as "as mischievious a document as any ever issued at any time." He added that whatever he said was subject to any explanation of the document which might be forthcoming. The document was wrongly addressed, wrongly dated and wrongly worded, but even if these details had been right, the notice would still be wrong, because it said something that was not the law but gave everybody the impression that it did state the law. The various Civil Defence (Employment) Orders were made under regs. 29B and 38 of the Defence (General) Regulations, 1939. The former regulation empowers a Secretary of State or the Minister of Health to make orders requiring constables and certain categories of civil defence workers to continue in employment until their services are dispensed with in accordance with the order. The orders provide generally that such persons are required to continue in their employment until their services are dispensed with, as they may be by the Secretary of State or the Ministry of Home Security or such other person as is specified in the order. The objection to the notice on which the learned magistrate commented appears to be that there must be an express discharge of an individual employee, and it is not competent under the Regulations or under the Orders for the Minister or anyone else to make any rule providing for a discharge to operate automatically on the happening of a given set of circumstances.

Documents and War Damage.

Many solicitors in the raided areas who were unable to take advantage of The Law Society's microfilm service will feel some sympathy towards the proposal contained in a letter to *The Accountant* for the 6th December from "Deebee." The writer complains that the now well-known definition of "goods" in s. 95 of the War Damage Act, 1941, expressly excludes "evidences of title to any property or right or of the discharge of any obligation, or any document owned for the purpose of a business." The result of the definition, as the writer pointed out, is that a professional person who uses paper for the purposes of his profession, can only claim for their value either as stationery or as wastepaper, and in spite of the fact that he spends time and effort in converting stationery into documents, he only thereby depreciates their value from the point of view of war damage insurance. He wrote: "It applies equally to the legal profession, since the loss by a solicitor of all his records might necessitate, *inter alia*, copies from court and counsel of many documents and papers in legal and other proceedings pending." He argued that the working papers, etc., of professional firms are similar to the stock of a trader to the extent that it is invariably of great importance for at least those in current use to be replaced. The proposal of the writer was that the Institutes of Chartered Accountants and Incorporated Accountants and The Law Society should examine the problems relating to the extension of the definition of the word "goods" in the War Damage Act, and also submit the matter to the Board of Trade as to the basis of valuation. No doubt some good might come from a joint consultation with other professional bodies, so long as it is understood that the basis of valuation necessarily varies from one profession to another. It is fair also to infer from the express exclusion of documents from the definition of "goods" that Parliament has given full consideration to the matter and would be extremely reluctant to reconsider it. The remedy for the future is the microfilm, but in the meantime professional bodies may be able to perform useful exploratory work into the questions of a basis of valuation and of possible insurance outside the scope of the Act.

Control of Mortgages.

In a circular letter to local authorities the Lords Commissioners of the Treasury refer to reg. 6 of the Defence (Finance) Regulations, 1939, which deals with the control of capital issues, and forbids, without the consent of the Treasury, the renewal or postponement of the date of maturity of any security, including a mortgage or charge, maturing for repayment in the United Kingdom, subject to such exemptions as may be granted by order of the Treasury. For the purposes of the circular, "mortgages" include, as hitherto, local bonds, corporation bonds and similar securities not marketable, or quoted on the Stock Exchange, and exclude bills or promissory notes. The circular states that the Treasury gives its consent to the following: (*a*) All mortgages maturing for repayment may be renewed or replaced (by other mortgages as defined above) without specific Treasury consent until 31st December, 1942. This excludes maturities resulting from notice given by the borrower. (*b*) Mortgages at rates exceeding 3½ per cent. per annum, the terms of which enable local authorities to give notice of repayment, may be renewed (on revised terms) or replaced at the instance of the authority without specific Treasury consent. This sanction covers renewals or replacements taking effect not later than 31st December, 1942. The circular expressly states that nothing in it affects existing instructions regarding other consents which may be necessary, e.g., from other departments or from the Treasury under other regulations.

Price Control: Increased Penalties.

More stringent action against black market racketeers is foreshadowed by a new Defence Regulation (1941, No. 1981). It adds a new paragraph, 1B, to reg. 55 of the Defence (General) Regulations, 1939. That regulation deals with the general control of industry, and reg. 55 (1) (*a*) is that part of it which empowers the competent authority by order (*inter alia*) to control prices at which articles may be sold and the charges which may be made for the hire of such articles, and for labour, services or goods provided in connection with the hire thereof. The new paragraph provides that where an order under reg. 55 (1) contains such provisions as are mentioned in reg. 55 (1) (*a*), and a person is, in respect of any article, convicted of an offence of contravening such a provision, he will be liable to further penalties in addition to those imposed by reg. 92, i.e., the maximum penalty of three months' imprisonment or £100 fine, or both, on summary conviction, and, on indictment, two years' imprisonment or £500 fine, or both. The further penalties imposed by the new paragraph are (*a*) where the offence was a sale or agreement or offer to sell, or an invitation of an offer to buy, at too high a price, a fine of an amount not exceeding three times that price; and (*b*) in any other case, of an amount not exceeding three times the price which the article might be expected to fetch if lawfully sold. The new paragraph further provides that the competent authority may by order provide for the seizure, and, if thought desirable, the sale of any article in respect of which any such offence is believed to have been committed. It may also by order enable the court by or before whom a person is convicted of any such offence in respect of the article, if satisfied that he was the owner of the article at the time of the seizure, to direct that the whole or part of the proceeds of the sale of the article shall be applied in or towards the satisfaction of any fine imposed on that person for that offence. An order by the competent authority may also provide for the return of the article, or, as the case may be, of the proceeds of the sale thereof to such person as may prove that he was the owner of the article at the time of the seizure. The new paragraph introduces a salutary stringency into the methods of enforcing price control. This will be welcomed by all but the few who have sought to derive selfish profit from the war.

A Conveyancer's Diary.

Re Robb's Contract.

I HAVE deferred comment on *Re Robb's Contract* [1941] Ch. 463, until now, as I wished to have before me the report in the Law Reports, which is only recently available. The case seems to be a rather important one, and it is to be hoped that the serious inconveniences which it involves, so forcibly mentioned by the Court of Appeal, will shortly be remedied by legislation.

The case relates to s. 74 of the Finance (1909–10) Act, 1910, which subjected voluntary conveyances to *ad valorem* duty. For an understanding of the case, which turns on construction, it is unfortunately necessary to set out the section at some length. "(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale" (calculated on the value, as there is no consideration): "Provided that this section shall not apply to a conveyance or transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act" (in certain circumstances for securing the preservation of the property for the benefit of the public).

"(2) Notwithstanding anything in section 12 of the" (Stamp Act, 1891), "the Commissioners may be required to express their opinion under that section on any conveyance or transfer operating as a voluntary disposition *inter vivos, and no such conveyance or transfer shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that section.*" Subsection (3) is immaterial for the present purpose; subs. (4) is material so far as it provides that if an "instrument" is chargeable under the Stamp Act as a "settlement" and under s. 74, it shall actually be charged only under s. 74. Subsection (5), so far as material, says that "Any conveyance or transfer (not being a disposition in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos* . . ." Subsection (6) is as follows: "A conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property, *shall not be charged with duty* under this section, and this subsection shall have effect notwithstanding that the circumstances exempting the conveyance from charge under this section are not set forth in the conveyance or transfer."

The point in *Re Robb* was whether a conveyance on trust for sale, stamped with a ten shilling stamp, and bearing no adjudication stamp, which was part of the title of a vendor, was duly stamped. This document contained the provisions usual where the legal estate is conveyed to trustees for sale and they are to hold the proceeds on the trusts of a deed of even date executed afterwards. This device is, of course, the most frequent one for settlements of land at the present day. The object is, of course, "to keep the trusts off the title." Its counterpart in cases where there is to be no conversion into personalty is the scheme of the Settled Land Act, 1925, by way of vesting deed and trust instrument. Section 4 (3) (*e*) of that Act expressly provides that the *ad valorem* stamp in such a case is to be on the *trust instrument*, and I think many of us had supposed that in like manner in the case of a settlement by way of trust for sale the *ad valorem* duty is payable on the settlement of proceeds rather than on the conveyance to trustees for sale. In *Re Robb*, Simonds, J., and the Court of Appeal have held otherwise. The effect of their decision is that if a conveyance on trust for sale bears a ten shilling stamp and no adjudication stamp, it is inadequately stamped. If it bears an adjudication stamp, it has, of course, to be treated as adequately stamped (see Stamp Act, 1891, s. 12 (5)), and Simonds, J., indicated that it does not matter, so long as the duty is adjudicated, whether the settlement is stamped *ad valorem* and the conveyance with a ten shilling stamp, or *vice versa* (see p. 472).

This short point is not altogether convenient itself, as there are no doubt a good many conveyances on trust for sale, and whenever they come up in an abstract the purchaser will now be able to insist on adjudication unless the transaction was before 29th April, 1910. But the reasoning by which it was arrived at is such that it is clear, unless the law is altered, that the same position arises with all documents within s. 74 (6) of the 1910 Act. There must be a very large number of cases where the stamps on various classes of document within subs. (6) have not been adjudicated.

Simonds, J., held that the conveyance on trust for sale was clearly a document "under which no beneficial interest passes." It was argued that the fact that the instrument contained a charging clause caused a beneficial interest to pass, but he easily disposed of this point on the ground that such a clause was merely a piece of administrative machinery (pp. 470–471). On the point of substance, he held that as it was open to the settlor to repudiate the whole arrangement at any moment until the settlement of proceeds had been actually executed, and so produce a resulting trust in his own favour, it was clear that the conveyance did not pass any beneficial interest. That being so, it was clear that subs. (6) saved the conveyance from being chargeable. With this reasoning the Court of Appeal agreed.

But, on the other hand, as was made plain by the Master of the Rolls, the conveyance was a voluntary one as defined in subs. (5), as all conveyances are thereunder voluntary for the purposes of s. 74 unless they are "made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration." Once within the class of voluntary dispositions, a document is within the ambit of s. 74, except in the single instance of a conveyance to a very limited class of corporation for preservation. That single type is, by express words, excepted from the whole section by the proviso to subs. (1). If Parliament had meant to except any other sorts of instrument, they would no doubt have been excepted in the same manner and at the same place. What is done by subs. (6) is not to take the documents there mentioned out of the section, but to exempt them from charge under the section. Consequently the other parts of the section apply to documents within subs. (6), including subs. (2). The upshot is that even if a document that is a voluntary disposition is rightly stamped with a ten shilling stamp, because of subs. (6), it is not "deemed to be duly stamped" unless it has been adjudicated, having regard to subs. (2).

This reasoning of the Master of the Rolls was followed by Clauson, L.J., who expressed himself compelled to such a conclusion by "inexorable logic" (see p. 478). None of the learned judges concerned evinced any enthusiasm for the decision which they felt bound to give, and Clauson, L.J., went out of his way to say that it was most inconvenient and that he had sought in vain for a loophole. The consequence is that as none of the documents mentioned in subs. (6) are to be deemed duly stamped unless adjudicated, there must be thousands of titles containing such a flaw. And it is a very serious flaw, as, under Stamp Act, 1891, s. 14 (4), no stampable document is receivable in evidence unless it is duly stamped. It has certainly not been the practice to have the stamps adjudicated on transfers to new trustees or on transfers from trustee to beneficiary at the end of a trust, to mention only two classes. Clauson, L.J., expressed the opinion that transfers for nominal consideration by way of security might escape this difficulty as they might not be "voluntary conveyances" at all, as being transfers to an incumbrancer and so outside subs. (5). But even if this suggestion is right (and it is only *obiter*), the problem remains a very serious one; in practice, instruments within subs. (6) are not treated as requiring adjudication; this practice has worked well for thirty years, and the validity of many titles depends on it. It is clear that it should now be given the statutory basis, which it has all along been thought to have. A temporary arrangement by the Revenue has been announced (see "Current Topics," p. 464), but obviously the position should be regularised.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 18th December:—
Consolidated Fund (No. 1).
Expiring Laws Continuance.
National Service (No. 2).

PROGRESS OF BILLS.

HOUSE OF LORDS.

India (Federal Court Judges) Bill [H.L.].
Read Third Time. [18th December.

HOUSE OF COMMONS.

Restoration of Pre-War Trade Practices Bill [H.C.]
Read First Time. [17th December.

Mr. Harry Clifford Clifford-Turner, solicitor, of Inkpen, Berks, of Heathfield Park, Sussex, and Old Jewry, E.C., left £232,686, with net personalty £136,229.

Mr. Christopher Coleman Gill, solicitor, of Bath, left £44,835, with net personalty £34,581.

Our County Court Letter.

Tenancy of Market Garden.

In a recent case at Worcester County Court (*Griffiths* v. *Peacey and Tidmarsh*) the claim was for a declaration that the plaintiff was tenant of eight acres of market garden and orchard at Eckington; £50 as damages for trespass and/or interference against each defendant; an injunction to restrain the second defendant from trespassing or remaining in possession of the land. The plaintiff's case was that, under two letters in December, 1940, the first defendant, as owner, had granted him an annual tenancy from the 29th September, 1940, at a rent of £44 a year. The plaintiff was already in possession in December, with the consent of the county war agricultural committee, who had discussed grubbing out 700 fruit trees with the consent of the first defendant. In spite of plaintiff's tenancy, however, a five years' lease of the land had been granted to the second defendant from the 25th March, 1941, at a lower rent—£28. The plaintiff had ill-advisedly given up possession on the 25th March to the second defendant, who offered him £22 for strawberry plants, without a valuation. The county committee, however, suggested £32, which the plaintiff accepted. The plaintiff was dumbfounded to hear he was not the tenant, as he had taken the land over in September, 1940, from his father, who had been its tenant for forty-three years, and had helped in the cultivation since the plaintiff took over. The case for the defence was that the county committee had had adverse reports of the holding in November, 1939, and November, 1940. The committee had therefore decided not to accept the plaintiff as tenant, and his father was understood to have remained in possession without authority. The first defendant had accordingly properly granted the lease to the second defendant, as the land was to let from the date upon which the committee had decided that neither the plaintiff nor his father could be accepted as tenant. The plaintiff had not disputed the second defendant's right of entry on the land, and the compensation for crops was settled by agreement. There had been no improper procedure, either by the county committee or the defendants, and there was no concluded agreement for a tenancy to the plaintiff. His Honour Judge Roope Reeve, K.C., held that there had been an agreement to grant a tenancy to the plaintiff. The tenancy had not been determined by agreement or surrender, and the plaintiff's delay in taking steps—after receipt of notice that the county committee considered him an unsuitable tenant—did not extinguish his legal rights. This delay was due to his being informed of the arbitrary powers of the committee. Judgment was given for the plaintiff for £50 against the first defendant, and a declaration was made against both defendants that the plaintiff was the tenant and entitled to possession; the second defendant to give up possession in seven days, allowing time for any valuation of crops and for removal of his property, with liberty for the plaintiff to apply for an injunction. Costs were awarded to the plaintiff on Scale C. The second defendant had claimed an indemnity against the first defendant, but, as damages had not been awarded against the second defendant, he was merely awarded costs on Scale B against the first defendant. In a separate action by the first defendant against the plaintiff's father, judgment was given for £22 for use and occupation of the land. A stay of execution was granted in respect of the damages awarded against the first defendant, pending service of notice of appeal.

Decisions under the Workmen's Compensation Acts.

Lump Sum for Loss of Index Finger.

In *Lawton* v. *Littleton Collieries, Ltd.*, at Walsall County Court, the case for the applicant was that in January, 1940, he was working on a coal cutting machine when his hand became trapped. A portion of the index finger of the left hand was amputated, but the applicant returned to light work after seventeen days. On resuming his old work, he found he could not manage the machine, but in July, 1940, he was certified as fit to return to the machine by the respondents' doctor. The applicant's doctor disagreed, and was upheld by the medical referee. A second operation was performed, and in December, 1940, the applicant applied for his old work, but this was refused on the ground of his pre-accident inefficiency. The applicant therefore took up light work at 12s. 1d. a shift, instead of 13s. 6d. on the coal cutter, and he claimed an award of 5s. 11d. a week. The respondents' case was that the applicant had only earned £3 3s. 8d. a week on the average before the accident, and, at six shifts a week at 12s. 1d., the applicant had suffered no diminution in his earning capacity at light work. By consent, His Honour Judge Caporn made an award of £35 in full settlement, with £25 agreed costs.

To-day and Yesterday.

LEGAL CALENDAR.

22 December.—In 1534, John Fisher, the pious and learned Bishop of Rochester, was imprisoned in the Tower of London for refusing to recognise Henry VIII's claim to be supreme head of the Church in England. He was sixty-five years old, feeble, emaciated and an invalid, and was terribly affected by the cold and damp of the Strong Room in the Bell Tower. On the 22nd December he wrote a pathetic letter to the Secretary of State, Thomas Cromwell: " . . . I have neither shirt no suit nor yet other clothes that are necessary for me to wear but that be ragged and rent too shamefully. Notwithstanding, I might easily suffer that, if they would keep my body warm . . . I beseech you soon to have some pity upon me and let me have such things as are necessary for me and specially for my health." He also begged for the visit of a priest and the loan of books, ending: " Our Lord send you a merry Christmas and a comfortable to your heart's content." Six months later, still refusing his submission, he was tried and executed.

23 December.—Sir John Johnston, an impoverished Scots gentleman serving in the army, was unfortunate with the ladies. In Ireland he won the heart of an heiress who would have eloped with him had not her father found out and had him ambushed and beaten at the place of assignation. It was rumoured that his relations with two other ladies at Chester and Utrecht had been marked by force rather than persuasion. At last he was hanged at Tyburn on the 23rd December, 1690, for helping a fellow Scot, Captain James Campbell, brother of the Duke of Argyll, to abduct an heiress worth £1,500 a year. Stranded in London without money, he had been drawn into the venture. At her home in Great Queen Street the lady had been forced into a coach and carried off to go through the marriage service by coercion. The union was dissolved by Act of Parliament, but Campbell himself escaped punishment and married a Lord's daughter.

24 December.—John Smith, ex-merchant seaman, ex-naval man, ex-guardsman, was hanged at Tyburn for housebreaking on the 24th December, 1705, but a reprieve arrived fifteen minutes later and he was cut down and revived by bleeding at a neighbouring house. He gave this account of his experience: First the weight of his body gave him great pain and he felt his spirits in a strange commotion violently pressing upwards till he saw a glaring light which seemed to go out of his eyes with a flash, after which he lost all sense of pain. When he was cut down and began to come round, the blood forcing itself through its former channels gave him such intolerable pain by a sort of pricking or shooting that he could have wished those hanged who cut him down. He was afterwards known as " Half-hanged Smith."

25 December.—Here is a Christmas incident of 1822: " Charles Clapp, Benjamin Jackson, Denis Jelks and Robert Prinset were brought to Bow Street Office by O. Bond, the constable, charged with performing on several musical instruments in St. Martin's Lane at half-past twelve o'clock on Christmas morning, by Mr. Munroe, the authorised principal wait, appointed by the Court of Burgesses for the City and Liberty of Westminster, who alone considers himself entitled, by his appointment to apply for Christmas Boxes. He also urged that the prisoners, acting as minstrels, came under the meaning of the Vagrant Act, alluded to in 17th Geo. II; however, on reference to the last Vagrant Act of the present King the words 'minstrels' is omitted; consequently they are no longer cognisable under that Act of Parliament; and in addition to that, Mr. Charles Clapp, one of the prisoners, produced his indenture of having served seven years as an apprentice to the profession of a musician to Mr. Clay, who held the same appointment as Mr. Munroe does under the Court of Burgesses. The prisoners were discharged, after receiving an admonition from Mr. Hall, the sitting magistrate, not to collect Christmas Boxes."

26 December.—On the 26th December, 1775, " a young man of good family was carried before Sir Charles Asgill (who sat for the Lord Mayor) for attempting to put off to a Quaker some counterfeited bills drawn on Alderman Plomer for £700. But on the Quaker's refusing to make oath of the affair, he was only ordered to go into the East India Company's service and bailed out till a proper station in it could be procured for him."

27 December.—On the 27th December, 1788, there were hanged at the Old Bailey " Richard Carrol, a blind man, for breaking open the house of John Short in the Parish of St. Botolph, Aldgate, and stealing a quantity of wearing apparel; George Roberts, for assaulting Benjamin Morgan on the highway near Finchley and robbing him of one guinea and some silver; and Thomas Kennedy, for stealing a

quantity of silver buckles, plate, jewels and other goods to the amount of £100 in the dwelling-house of Richard King where he was shopman."

28 December.—On the 28th December, 1852, Lord Cranworth received the Great Seal as Chancellor in Lord Aberdeen's cabinet, having previously been one of the first Lords Justices in the Court of Appeal in Chancery. He retained his post till 1858. He was very active in the reform and simplification of the law. In particular, in 1854 he carried through a Bill for the amendment of common law procedure.

Reviews.

The Law and Practice of War Damage Compensation. By HAROLD B. WILLIAMS, LL.D., of the Middle Temple, Barrister-at-Law, and MONTAGU EVANS, M.C., F.S.I., F.A.I., member of the Rating Surveyors' Association. 1941. pp. iv and 416 (including Index). Cambridge: W. Heffer and Sons, Ltd. 21s. net.

This excellent manual has the double advantage of being the joint work of an authority on rating law and the law of local government generally and a rating surveyor of repute, who is not only chairman of the Parliamentary and Legal Committee of the Auctioneers' and Estate Agents' Institute, but also chairman of the Poor Man's Valuer Association for London, a body specially constituted to give technical assistance to poor war damage claimants. The book contains a special chapter devoted to problems under the Act, and in Appendix D there are many practical problems of valuations and the various calculations that have to be made under the Act. Chapter I contains a 61 page outline of the Act which is admirably lucid and well written. The notes to the text of the Act are extremely helpful, and there are seven appendices of statutory rules and orders and other relevant matters, as well as a full index. This work can be thoroughly recommended as well for its intrinsic merit as for the fact that the entire profits of the public edition, including authors' royalties, are to be devoted to the Royal Air Force Pilots and Crews Fund.

The Law of Income Tax. By E. M. KONSTAM, K.C. Eighth Edition. 1940. pp. xcviii and (with Index) 862. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £2 12s. 6d. net.

The eighth edition of this classic work of reference fulfils all expectations. Much has happened since 1936, the date of the last edition, and this has been strongly reflected in income tax legislation since then, as taxpayers know to their cost. The same lucidity of presentation that distinguished previous editions illuminates the eighth, in spite of the many cryptic statutes that it unravels. The Acts of 1937, 1938 and 1939 extended rather than amended the law, but the Finance Act, 1940, makes important changes, for instance, those with regard to rents, mortgage interest and other annual payments connected with land, which either tax a surplus over the Sched. A assessment or transfer the method of deduction at the source from that schedule to Sched. D. All these changes, including changes in case law, are clearly explained. In addition to the text of the legislation there is an admirable index. No lawyer can afford to be without this text-book.

Cases on the Law of Tort. By P. H. WINFIELD, F.B.A., LL.D., of the Inner Temple, Barrister-at-Law. Second Edition, 1941. pp. xii and 323. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

The cases on the above subject have been arranged by the learned author under thirty-five headings. The method is to state a proposition, and then to cite the cases in support of it. The actual words of the judgments are quoted, and these extracts are followed by explanatory notes. These notes are brief and to the point, and their lucidity will be found a valuable aid, both to the student and the practitioner. The latter will note with interest the comment on *Benham* v. *Gambling* [1941] A.C. 157, under the title "Death of Injured Party," in reference to the loss of expectation of life. The important restriction on the doctrine of common employment, viz., that it does not apply to motor vehicle drivers, is given due prominence by the inclusion of *Radcliffe* v. *Ribble Motor Services, Ltd.* [1939] A.C. 275. A third important recent case, duly noted, is the *Sedleigh-Denfield Case* [1940] A.C. 880, in reference to the liability of an occupier who continues or adopts a nuisance created by a trespasser. It may safely be said that this edition will maintain the high reputation established by its predecessor.

Mr. William Harold Stowe Oulton, J.P., LL.M., a former Metropolitan stipendiary magistrate, left £27,846, with net personalty £22,191.

Notes of Cases.

CHANCERY DIVISION.

In re **Harvey; Westminster Bank, Ltd.** *v.* **Askwith.**

Bennett, J. 15th October, 1941.

Will—Two estates settled on identical charitable trusts—Whether trustees can blend trust funds—Power of court to permit blending—Trustee Act, 1925 (5 *Geo.* 5. *c.* 19), *s.* 57.

Adjourned summons.

This summons was taken out by the executor and trustee of the wills of two sisters. The first sister, A.H., who died on the 21st March, 1931, gave her residuary estate upon trust to pay the income thereof to her sister, E.H., during her life and after her death to hold the estate upon charitable trusts to provide a home for poor persons. E.H., who died on the 19th September, 1936, gave her residuary estate upon similar charitable trusts. The two estates amounted to upwards of £31,000 and £62,000 respectively. Two committees consisting of the same members had been appointed to manage the two charities in accordance with the terms of the wills, and it was desired to blend the two funds and to purchase a single home to be maintained out of the balance of the funds. By this summons the trustee asked whether the two funds might be blended for this purpose, and if this was not authorised by the trusts, that the court might empower the trustees to blend the funds.

BENNETT, J., said that he was not prepared to hold that the trustee was entitled to blend the two trust funds. Neither testatrix had authorised the blending of her estate with that of the other. The power conferred by s. 57 of the Trustee Act, 1925, on the court enabled the court to grant such leave, and he would authorise the trustee to blend the two funds for the purpose of founding and maintaining one joint home.

COUNSEL: *R. Goff; H. Lightman; H. O. Danckwerts.*

SOLICITORS: *J. J. Warden Gowing; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Hirst; Public Trustee** *v.* **Hirst.**

Morton, J. 3rd November, 1941.

Will—Construction—Annuities given "clear of all deductions," including New Zealand income tax—Whether annuities payable free of the New Zealand annual tax known as "The Social Security Contribution."

Adjourned summons.

The testator by his will made in 1937 bequeathed an annuity of £52 to each of his two sisters, who were then, and continued to be, resident in New Zealand. It was thereby provided that the annuities should "be paid clear of all deductions whatsoever (including . . . income tax at the current rate deductible at the source or payable in New Zealand so long as they reside there)." The testator died in 1938. By the Social Security Act (N.Z.), 1938, which came into operation after the testator's death, a new tax known as the Social Security Contribution was imposed on all residents in New Zealand. The tax was at the rate of 2s. in the £. The tax was not income tax, but it was assessed and collected as if it were. The annuities were not subject to income tax in New Zealand. This summons raised the question whether the annuities were given free of the Social Security Contribution.

MORTON, J., said that it was well settled that the words "shall be paid clear of all deductions whatsoever" in the absence of any context did not have the result of freeing an annuitant from payment of income tax (*In re Loveless* [1918] 2 Ch. 1). In this will, however, the testator was regarding income tax as a deduction. For this reason "deductions" could not be given a limited meaning. The Social Security Contribution resembled income tax and the testator would have regarded it as a deduction. Accordingly, it was one of the deductions from which the annuities were free.

COUNSEL: *H. A. Rose; Myles; Lindner* (for *H. Salt*), *Winterbotham; L. Norris.*

SOLICITORS: *Peacock & Goddard*, for *J. Knight*, Bournemouth.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Re **Bickerton's Settlement; Shaw** *v.* **Bickerton.**

Uthwatt, J. 12th November, 1941.

Settlement—Personalty—Whether cross limitations will be implied.

Adjourned summons.

By a settlement of 1908 the settlor vested certain personal property in trustees upon trust to invest and after his death (which occurred in 1929) upon trust to pay certain annuities to the settlor's widow and, as to the surplus income, in trust to pay the same to the children of the settlor on attaining twenty-one. After the death of the widow the trustees were directed (in effect) to divide the trust fund into as many shares as there should be children of the settlor and to appropriate one share to each child and to hold such share upon trust to pay the income to such child and after his or her death on trust for his or her children at twenty or marriage as therein provided. By cl. 9 it was provided that, if there should be no grandchildren of the settlor who being male should attain the age of twenty-one years or being female should attain that age or marry, the trustees should hold the trust fund upon trust for the settlor. The settlor was survived by four

children; one, E, died in 1941 in the lifetime of the widow without having had issue. By this summons, to which the settlor's widow, the personal representatives of E and the surviving children were defendants, the trustees of the settlement asked how the income and capital of E's share devolved.

UTHWATT, J., after declaring that E's personal representatives took the income of her share during the remainder of the widow's life, said that as a matter of construction on the widow's death the capital of E's share would accrue to the shares of the other children of the settlor in equal shares. Clause 9 was only a statement of the way in which the trust fund was to go back to the settlor. As a matter of law, in the case of a settlement of personalty, as in the case of a will, it was proper to imply a gift over. For that, authority was to be found in the view expressed by Lord Russell in *Adamson* v. *Attorney-General* [1933] A.C., at p. 279.

COUNSEL: *Humphrey King* (for *Wigglesworth*, on war service); *Tillard; Gandy; Romer*, K.C.; and *J. A. Wolfe*.

SOLICITORS: *Durrant Cooper & Hambling*, for *Wigglesworth & Son*, Manchester; *Gregory, Rowcliffe & Co.*, for *Pattinson & Harrison*, Macclesfield; *Corbin, Greener & Cook*, for *Bennett, Brooke Taylor & Co.*, Buxton.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Re Hunter's Lease; Giles *v.* Hutchings.

Uthwatt, J. 19th November, 1941.

Landlord and tenant—Covenant by landlord to make cash payment on termination of lease—Whether covenant runs with reversion—Law of Property Act, 1925 (19 *Geo.* 5, *c.* 20), *s.* 142.

Originating summons.

By a lease made on the 1st December, 1930, between G of the one part and the plaintiff of the other part, G granted a lease of certain premises to the plaintiff for a term of five years. G was called in the lease the lessor, which term was defined as including the estate owner for the time being of the reversion of the premises thereby demised. The lease contained a provision that, on the expiration of the term, the lessor would pay to the plaintiff the sum of £500, but if the lessor did not wish to pay that sum the lessee might continue in occupation and the lessor would grant to him a lease for a further term of five years, such new lease to contain all the provisions of the original lease. The lease was extended for a second period of five years, which expired in 1940. The plaintiff did not desire to continue as tenant and gave up possession. In 1938 the original lessor had conveyed the property subject to the lease to the defendant, who was willing to grant a lease for a further term. By this summons the plaintiff asked whether the defendant, as the present reversioner, was bound by the covenant in the lease to pay £500.

UTHWATT, J., said that prior to the passing of s. 11 of the Conveyancing Act, 1881, now s. 142 of the Law of Property Act, 1925, it had been decided that the burden of covenants by the lessor contained in a lease did not pass to his assignee unless those covenants touched and concerned the thing demised. The ambit of the covenants which pass with the reversion remained as it was before the passing of those Acts. One was left with the old question: did the covenant in question touch and concern the thing demised? The substance of the matter here was the payment by the lessor of £500 on the expiration of the lease. If he did not pay, the lessee might continue in possession; that was an alternative. Neither party could force upon the other a renewal of the tenancy. This covenant did not touch or concern the thing demised, namely, the subject-matter of the lease. Therefore the defendant was not personally responsible for the payment of £500.

COUNSEL: *Michael Bowles; H. A. Rose.*

SOLICITORS: *Gibson & Weldon*, for *Tucker & Jenkins*, Paignton; *Walter Crimp & Co.*, for *Kitsons, Hutchings, Easterbrook & Co.*, Torquay.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Wyles *v.* Banfield.

Viscount Caldecote, C.J., and Tucker, J. 17th July, 1941.

Emergency legislation—Unattended motor car—Immobilisation—Use of vehicle for civil defence purposes—Motor Vehicles (Control) Order, 1940, *para.* 1 (1).

Appeal by case stated from a decision of the Birmingham Stipendiary Magistrate.

An information was preferred by the appellant, a police inspector, against the respondent Banfield, charging him under para. 1 (1) of the Motor Vehicles (Control) Order, 1940, with leaving a motor-car unattended during the hours of daylight without taking the necessary steps to immobilise the vehicle. By sub-para. (3) (*a*), para. 1 does not apply to "a vehicle whilst being used as a . . . civil defence vehicle." The respondent was the head A.R.P. warden for a district in Birmingham. At 12.25 p.m., the time of the alleged offence, he was visiting an A.R.P. post in the ordinary course of his duty. The car was his own property, and was used by him for private and business purposes. It was registered in his name and he paid the tax on it, but it was insured by the A.R.P. committee, and he was allowed petrol and granted allowances to use the car in the course of his duties as head warden, the car being essential for the carrying on of those duties. It was contended for the appellant that the car was not being used as a civil defence vehicle as the respondent was using it for his own convenience and not because it was essential to his work as head warden, and that the exemption in the order was intended to apply to vehicles used solely in connection with civil defence. The magistrate found that at the time in question the car was being used as a civil defence vehicle. He accordingly dismissed the information. The inspector appealed.

VISCOUNT CALDECOTE, C.J., said that it had been suggested that it was desirable that a ruling should be obtained from the court as to the proper interpretation to be placed on the regulation; but he doubted whether a ruling of the court could possibly apply, or be of assistance, in any other state of facts than those which the magistrate had actually found. Counsel had suggested that it was a misinterpretation of the order to hold that the motor-car in this case was being used as a civil defence vehicle, and that it was only being used by the warden as a convenience to enable him to get round to his post more quickly. The case included a finding that at the material time the car was in fact being used as a vehicle which was essential for the carrying on of the respondent's duties as head warden, and on that finding the magistrate came to the conclusion that, at the time in question, the car was being used as a civil defence vehicle. In his (the Lord Chief Justice's) judgment there were facts which justified the magistrate in coming to the conclusion at which he had arrived, and the appeal must therefore be dismissed.

TUCKER, J., agreeing, said that the magistrate had directed his mind to the particular user of the car at the time when it was said that it should have been immobilised. That was the material time to take into consideration, and regard must be had not to the normal or habitual or general user of the car, but to the purpose for which it was being used at such material time.

COUNSEL: *Gattie;* there was no appearance by or for the respondent.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *M. P. Pugh*, Birmingham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Brentford Justices.

Viscount Caldecote, C.J., Humphreys and Lewis, JJ. 29th October, 1941.

Summary jurisdiction—National service—Conscientious objector—Failure to submit to medical examination—Successive remands—Validity.

Application for an order of *certiorari*.

On the 1st January, 1941, one Muirhead was summoned before Brentford justices on a charge of failing to submit himself to medical examination under s. 3 (1) of the National Service (Armed Forces) Act, 1939. Before the case against him began the chairman of the justices, without consulting his fellow justices or their clerk, ordered Muirhead to be remanded for three weeks, saying: "I shall treat you all alike." On the 9th January Muirhead was granted bail, and since then the hearing of his case had been formally adjourned month by month so that the Divisional Court might have an opportunity of dealing with the matter. Failing to present oneself for medical examination as required is an offence under the Act by s. 3 (4); and by s. 17 (1), the maximum penalty is a fine not exceeding £5. It was contended that the intention of the chairman in ordering Muirhead to be remanded was to inflict a penalty greater than that allowed by the Act; the present application was made to have the order quashed. It was argued for the justices that they had acted under s. 16 of the Summary Jurisdiction Act, 1848, which provides: "Before or during such hearing of any such information . . . it shall be lawful for . . . the justices . . . to adjourn the hearing . . . and in the meantime the . . . justices may suffer the defendant to go at large or may commit him to the common gaol . . ."; and that, as the justices had exercised the discretion which the Act expressly gave them, the court could not interfere; and that, while the Act as it stood might require amendment, under it the justices might in their discretion remand an offender for the rest of his life.

VISCOUNT CALDECOTE, C.J., said that it was argued that the justices had an uncontrolled discretion to remand in custody anyone who might appear before them on an information or complaint. The argument led to the conclusion that that court had no power to interfere with the way in which justices might exercise discretion, even though their object was to inflict a penalty which was not allowed by the Act. In *R.* v. *Toynbee Hall Justices*, 83 SOL. J. 607; 55 T.L.R., at p. 845, Lord Hewart said that it could not be right for justices to remand an offender in custody for the real though unavowed purpose of punishing him by that act of remanding, and that it would be indefensible to make use of a judicial "discretion" for the purpose of detaining in prison an offender charged with an offence for which a punishment by imprisonment could not lawfully be ordered. The discretion given by s. 16 must be exercised by justices judicially. The order for a *certiorari* must be made as asked, and it was held proper that the justices should pay the costs.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Raeburn; F. D. Levy.*

SOLICITORS: *Pollard & Co.; C. W. Radcliffe.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The Solicitors' Journal

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